

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO

Kathleen Johnson,

Plaintiff,

vs.

Gallup McKinley County Schools;
Mike Hyatt,

Defendants.

COMPLAINT FOR VIOLATIONS OF THE FAMILY MEDICAL LEAVE ACT

Plaintiff alleges:

1. This action arises under the Family Medical Leave Act, 29 USC § 2601, et seq. This Court is vested with jurisdiction pursuant to Section 2617(a)(2) of Title 29 of the United States Code.

2. At all times relevant to this Complaint, Plaintiff resided within the District of New Mexico.

3. Defendant Gallup McKinley County Schools operates Crownpoint Elementary School (“School”) in the District of New Mexico.

4. Defendant Mike Hyatt is the superintendent of Defendant. He acted, directly or indirectly, in the interest of the School toward Plaintiff.

5. Both Hyatt and the School are “employers” as that term is defined in 29 USC § 2611(4).

6. The events giving rise to this claim occurred in the judicial District of New Mexico.

7. Plaintiff was first hired by Defendants in July 2014. She was employed as a Navajo bilingual and cultural teacher for Kindergarten through Fifth Grade. She held this position until earlier this year when the events described in this complaint took place.

8. On August 27, 2018, Plaintiff became very ill so she went to the Emergency Room at the IHS hospital in Crownpoint, New Mexico. She was advised that she was having a heart attack.

9. On August 28, 2018, Plaintiff's husband, Samuel Begay, dropped off paperwork from the Crownpoint doctors that described Plaintiff's condition. He informed the School that she could not come into work and needed to take leave.

10. On September 9, 2018, Plaintiff had open heart surgery with four bypasses.

11. On September 13, 2018, Plaintiff's husband asked Defendants for paperwork for long term leave. He received FMLA paperwork from Defendant, which he provided to the hospital. He was assured that the hospital would fill it out.

12. Because of the extreme nature of the surgery, Plaintiff was incapacitated for several days after her surgery. She requested FMLA leave as soon as her health permitted. This occurred approximately October 18, 2018.

13. Plaintiff's request for FMLA was denied, and she was discharged by Defendant Hyatt. The stated reason for the discharge was failure to tender FMLA paperwork within 15 days. She was told that this was per "Department of Labor" regulations. This is a false summary of DOL regulations.

14. In fact, the Department of Labor website actually says this about notice to the employer: "Employees must comply with their employer's usual and customary

requirements for requesting leave and provide enough information for their employer to reasonably determine whether the FMLA may apply to the leave request. Employees generally must request leave 30 days in advance when the need for leave is foreseeable. When the need for leave is foreseeable less than 30 days in advance or is unforeseeable, employees must provide notice as soon as possible and practicable under the circumstances.”

15. Plaintiff provided notice to the employer about her intent to exercise her FMLA rights when her husband reported her heart attack and requested leave.

16. Plaintiff alleges that this conduct constitutes unlawful interference, restraint or denial of Plaintiff’s FMLA rights.

17. This conduct violated 29 USC § 2615 and gave Plaintiff the right to sue under 29 USC § 2617(a).

18. Plaintiff is entitled to recover, and does hereby demand, statutory damages calculated based upon 29 USC § 2617(a)(1)(A), reinstatement based upon 29 USC § 2617(a)(1)(B), plus attorney’s fees and costs pursuant to 29 USC § 2617(a)(3).

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